

**AMENDED AND RESTATED SERVICE AGREEMENT
FOR OPERATION OF HACKETT HOUSE**

C2006-198

This Amended and Restated Service Agreement (“**Agreement**”), made this _____ day of _____, 2014, by and between the City of Tempe (“**City**”) and Tempe Sister City Corporation, an Arizona nonprofit corporation (“**Sister City**”).

RECITALS

WHEREAS, City and Sister City are parties to that certain Second Amended Service Agreement for Operation of Hackett House [c2006-198], dated August 17, 2006, as amended by an Extension Agreement to Second Amended Service Agreement for Operation of Hackett House [c2006-198a], dated December 16, 2011 (collectively, the “Service Agreement”) pursuant to which City granted Sister City the right to use the Hackett House and its surrounding property and related parking and other amenities (collectively, the “Premises”); and

WHEREAS, City and Sister City now desire to amend and restate the Service Agreement in its entirety, as more fully set forth below.

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions hereinafter set forth in the Recitals above and as stated below, and intending to be legally bound, Sister City and City agree as follows:

AGREEMENT

I. USE, OPERATION, MAINTENANCE AND REPAIR OF THE PREMISES

a. Use of the Premises. City hereby grants Sister City a license to use and operate the Premises during the term of this Agreement, exclusively for the following purposes:

1. As the headquarters of, and offices for, Sister City;
2. As an Information Center for sister city programs;
3. As a Gift Shop;
4. As a Reception Center where civic groups, small private parties and the City may hold receptions, parties and meetings, and where Sister City may conduct fundraising events and other programs (including without limitation, events that coincide with other major events in downtown Tempe, such as Spring and Fall Arts Festivals, New Year’s Eve Block Party and other similar events at Arizona State University or Tempe Town Lake); and
5. To conduct cooking classes and other educational programs consistent with the sister city mission.

The Premises may not be used for any other purpose or by any other person or entity during major events, without the prior written approval of the City Manager, which consent may be granted or withheld in the unfettered discretion of the City Manager. City reserves the right to utilize the Premises at no charge. The City shall coordinate its use of the Premises with Sister City.

Use of the Premises by Sister City shall not impair the existing listing of the Premises on the National Register of Historic Places.

b. Maintenance

1. Sister City shall maintain the interior of the Premises, at its sole cost and expense, and shall obtain such janitorial services as it deems necessary or appropriate to maintain the Premises in good condition and repair. Maintenance obligation shall include, without limitation, paint, wallpaper, floor and floor coverings, and any other similar such maintenance items.
2. City shall maintain the major appliances and fixtures that are installed in or are a part of the Premises, including heating and air conditioning units and permanent kitchen appliances.
3. Except as hereafter provided with respect to repairs necessitated by the negligence of Sister City, City shall maintain the exterior of the Premises, including all landscaping installed with City's approval and all structural components of the Premises in the same manner as that generally provided for other City-owned buildings listed on the ~~national~~ National Register of Historic Places.

c. Utilities

City shall pay not more than \$16,400 per annum toward the costs associated with providing electricity, local telephone (excluding long distance), water, sewer and solid waste disposal, and gas to the Premises (the "Utilities Costs"). Sister City shall pay all Utilities Costs in excess of those paid by City within thirty (30) days after receipt of any invoice for same from City. Any amounts not paid when due shall bear interest at the rate of 10% per annum from the date due until paid in full.

The Utility Costs shall be increased or decreased annually during the term by an amount equal to the lesser of (i) five percent (5%), (ii) negative five percent (-5%), or (iii) the Consumer Price Index--All Items--All Consumers--U.S. Cities Average--(1982 - 1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics ("CPI") for the preceding year. In the event the CPI is discontinued or substantially modified, the parties shall substitute such alternative price index, published by the United States Government or other generally accepted source for such information, reconciled to the Commencement Date.

d. Damage or Destruction to the Premises

Should the Premises be materially damaged or destroyed, City, in its unfettered discretion, will determine whether or not such damage will be repaired, to what extent it will be repaired and when it will be repaired, if at all. If City should decide not to repair the Premises, then Sister City may elect to terminate this Agreement. This provision does not, in any way, limit City's ability to seek compensation from Sister City or its insurer for damage to the Premises caused by the operations of Sister City, its officers, members, employees or volunteers.

e. Operating Policies

City shall have the right to review and approve Sister City's operating policies for the Premises, which approval shall not be unreasonably withheld.

f. Compliance with Laws

Sister City shall comply with all laws, statutes, acts, ordinances, rules, regulations, codes, and standards of legally constituted authorities with jurisdiction, applicable to the Premises. Sister City shall not use the Premises for any purposes in violation of any applicable zoning or other laws. Sister City shall obtain or cause to be obtained at its expense, all permits, approvals and authorizations required by its duties and obligations under this Agreement. The Premises shall not be used for any regularly organized/scheduled activity having, as its primary purpose, religious instruction.

II. ALTERATIONS

Sister City desires to construct certain improvements at the Premises to replace the existing temporary tent located in the existing courtyard. Such improvements would consist of an enclosed air-conditioned pavilion building and include ADA-accessible restrooms as described on Schedule 1 attached hereto (the "Improvements"). The final approval of the design of the Improvements shall be subject to City's approval in its unfettered discretion. City supports the Improvements as proposed, but realizes that they may change depending on fund raising efforts and Code requirements that at this early stage have not been fully vetted. Prior to submittal through the standard development review process, Sister City will seek general consensus from the City Council (as a property owner) of the final design concept. Thereafter, once sufficient funds are raised, Sister City shall process the Improvements for approval in accordance with City's standard development review process. Should the final design change as the project proceeds through the standard development review process, Sister City will seek approval from the City Manager prior to awarding a construction contract.

City will also consider allowing Sister City to convert the plaza area in the former right-of-way of Fourth Street and Maple Avenue adjacent to the Premises on the north and west to a driveway, as well as modification of the existing drive and parking area to the

east of the Premises. Such consideration shall be contingent on the support and the consent of the property owner where the drive is located, and shall remain subject to normal City review and process.

City and Sister City hereby agree to design and construct the Improvements in accordance with the requirements set forth on Schedule 2 attached hereto and incorporated herein by this reference.

III. TERM OF AGREEMENT; LICENSE FEE

a. Service Agreement Term

Unless extended as provided herein, the term of this Agreement shall commence on the day and date first above written, and terminate on December 31, 2023. This Agreement may be extended for four (4) additional ten (10) year periods upon written notice from Sister City given on or before the then applicable termination date of this Agreement. In the event that there is no formal extension of this Agreement, it will continue on a month-to-month basis upon the same terms and conditions, until thirty days after written notice by the City or Sister City.

b. Financial Records

Sister City shall make its financial records available to City upon reasonable written request.

c. City Ownership of Improvements

At the termination of this Agreement, by expiration or otherwise, and if Sister City is not then in default, Sister City shall have the right to remove from the Premises all appliances, fixtures and equipment belonging to it which can be removed without material damage to the Premises. Sister City shall repair and replace at its expense any portion of the Premises damaged by the removal of such appliances, fixtures and equipment so as to leave the Premises in good condition, reasonable wear and tear excepted.

d. Annual License Fee

On or before January 31 of each year during the term of this Agreement, Sister City shall pay City an annual license fee of \$1,800.00.

IV. GOVERNMENT LIQUOR LICENSE

a. City Liquor License

During the term of this Agreement, City shall maintain a valid liquor license for use by Sister City at the Premises in accordance with the terms of this Agreement.

b. Sister City Use of Government Liquor License

Sister City is authorized to use the City's government liquor license for Sister City functions at the Premises for its members and guests. Sister City shall supervise all aspects of the activities for which Sister City uses the City liquor license as permitted herein.

c. City Liquor License May Not Be Used During Major Events

The City's liquor license may not be utilized by Sister City for "major events" including but not limited to the Spring and Fall Art Festivals, New Year's Eve Block Party, the annual Oktoberfest held by Sister City, events at Arizona State University including bowl games, and events at Tempe Town Lake. For major events, the government liquor license will be suspended from use by Sister City. Sister City shall be permitted to serve alcoholic beverages for major events on the Premises only if it obtains the applicable liquor license. Major events are defined as those listed above or those which utilize more area than the Premises.

d. Compliance With Arizona Liquor Laws

Sister City recognizes and agrees that Sister City cannot allow those who rent the Premises to bring their own alcoholic beverages onto the Premises while City's government liquor license is used by Sister City. The consumption of any alcoholic beverages on the Premises must be in compliance with the laws and regulations of the State of Arizona. At all times when alcoholic beverages are being served on the Premises, Sister City will properly supervise the Premises and the use of alcohol thereon. In addition, Sister City will provide personnel and/or volunteers, trained in serving alcoholic beverages in compliance with the liquor laws of the State of Arizona.

V. INDEMNITY/HOLD HARMLESS AND INSURANCE

a. Insurance Coverage , Fixtures and Contents

The City at its election and expense, will carry such insurance coverage for loss or damage to the Premises, including buildings, structures, fixtures and improvements, which City deems appropriate. Sister City shall be responsible for insuring the contents and property of Sister City that may be located at the Premises.

b. Indemnity and Hold Harmless

Sister City shall indemnify and hold harmless the City and any of its agents, council members, officers, servants, volunteers or employees from any claim or cause of action of any kind, character or nature which arises out of the use or occupation of the Premises by Sister City under this Agreement, except to the extent caused by the gross negligence or intentional act of City, its employees, contractors, agents, officers, volunteers or officials.

c. Insurance

1. Usual Operation — Prior to commencing services under this Agreement, Sister City must furnish City certification from insurer(s) for coverage in the minimum amounts as stated below. The coverage shall be maintained in full force and effect during the term of this Agreement and shall not serve to limit any liabilities or any other Sister City obligations.

General Liability Including:

Comprehensive general liability including coverage for bodily injury; product and liquor liability; premises operations; contractual; independent contractors; products/completed operations hazard; personal injury; broad form property damage; explosion and collapse (if applicable); underground hazard (if applicable).

Limits of Liability Minimum — Each Occurrence

General Liability	Combined Single Limits	\$2,000,000.
Property Damage		\$2,000,000.
Product Liability	Combined Single Limits	\$2,000,000.
Liquor Liability	Combined Single Limits	\$2,000,000.
Auto Liability	Combined Single Limits	\$1,000,000
Workers Compensations — statutory each accident; and Employers Liability (if applicable)		

2. Major Events — The liquor liability insurance coverage for major events as defined in Section III above must be in place and a certificate of insurance naming City as an additional insured on file with City prior to each major event in the amounts set forth above.
3. The certificate of insurance provided to City shall state that the described insurance is primary of other sources that may be available. City requires a copy of the applicable endorsements on all required policies that list City as an additional insured.
4. Except for those policies obtained in connection with major events for a limited purpose, no policy shall expire, be canceled or materially changed to affect the coverage available to City without thirty (30) days written

notice to City. The insurance certificate is not acceptable to City unless countersigned by an authorized representative of the insurance company.

5. Prior to commencement of this Agreement and any activity requiring additional insurance coverage, Sister City must submit a copy of the Certificate of Insurance to City's Risk Management Office.

d. Taxes

Sister City shall be responsible for any and all taxes associated with its operation of the Premises, including any and all income tax, excise tax, transaction privilege tax, property tax, or possessory interest taxes resulting from Sister City's occupation and use of the Premises.

VI. DEFAULT; REMEDIES

a. Default

It shall be a default if either party fails materially to perform any covenant, condition, or agreement to be performed by such party pursuant to this Agreement or materially breaches any representation or warranty made by such party in this Agreement or otherwise in connection with the transaction of which this Agreement is a part and such failure continues beyond any applicable cure period. If a default involves the performance or non-performance of an act, or the occurrence or non-occurrence of an event or circumstance, the defaulting party shall have a period of 30 days from receipt of written notice from the other party in which to cure such default; provided that if the nature of the default is such that it cannot reasonably be cured within 30 days, then the non-defaulting party shall not pursue its remedies if the defaulting party commences the cure within 30 days and diligently pursues the same to completion within 90 days.

b. City's Remedies

City shall have the following remedies upon Sister City's default, which remedies shall not be exclusive, and are cumulative in addition to any remedies now or later allowed by law:

- i. City may cure the default at Sister City' expense, by taking any action reasonably determined by it to be necessary to correct such default. Sister City shall reimburse City for all costs it incurs to correct such default within thirty (30) calendar days after City presents Sister City with a statement of such costs.

- ii. City may terminate this Agreement.

iii. City shall be entitled to recover from Sister City all of City's expenses, costs and damages arising out of any default, including, but not limited to, cleanup, repair, alterations, legal expenses (whether or not suit is brought), and costs and expenses of litigation.

iv. City may also exercise any other rights City may have at law or in equity. City may exercise any remedy without court action, or by one or more court actions, and in exercising any remedy may obtain partial relief without waiving its right to further relief. The exercise of any remedy by City shall not waive City's right to exercise any other remedy.

c. Sister City's Remedies

Upon a default by City that remains uncured after the expiration of any applicable cure period subject to the provisions of Section VII(a), Sister City shall be entitled to terminate this Agreement and may exercise all remedies available at law or equity, including specific performance and injunctive relief. Provided, however, that Sister City may not recover punitive or consequential damages. If City fails to cure a default after notice, Sister City may cure the default at City's expense, by taking any action reasonably determined by it to be necessary to correct such default. City shall reimburse Sister City for all reasonable costs it incurs to correct such default within thirty (30) calendar days after Sister City presents City with a statement of such costs.

VII. ADDITIONAL PROVISIONS

a. Alternative Dispute Resolution

In the event of a dispute between the parties to this Agreement regarding a provision of this Agreement, a party's performance of its obligations as stated in this Agreement or any other matter governed by the terms of this Agreement, the parties will meet in good faith to attempt to resolve the dispute. If the parties fail to resolve the dispute, then the parties agree that the dispute may be resolved through mediation. If mediation is agreed to by the disputing parties, the disputing parties shall mutually agree upon the services of one (1) mediator whose fees and expenses shall be borne equally by the disputing parties. If the dispute is not resolved within a reasonable time, the disputing parties shall be free to use other remedies available to them to resolve the dispute.

b. Waiver

Failure or delay on the part of any party to exercise any right, remedy, power or privilege hereunder shall not operate as a waiver thereof. A waiver, to be effective, must be in writing and must be signed by the party making the waiver.

c. Amendments

No revision of this Agreement shall be valid unless made in writing and signed by duly authorized representatives of the parties.

d. Headings

The headings in this Agreement are used only for convenience in finding the subject matters, and are not to be taken as part of this Agreement, or to be used in determining the intent of the parties.

e. Entire Agreement

This Agreement constitutes the final expression of the agreement of the parties. This Agreement is intended as a complete and exclusive statement of the parties' agreement, and it supersedes all prior and concurrent promises, representations, negotiations, discussions and agreements that may have been made with respect to the subject matter hereof.

f. Severability

If any provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable by any court of competent jurisdiction, the remainder of this Agreement or the application of such provisions to persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

g. No Party to Be Deemed Drafter

The parties have both had the opportunity to have counsel examine this Agreement and to propose changes to clarify any ambiguities. Accordingly, in any interpretation of this Agreement, an ambiguity shall not be resolved by interpreting the Agreement against the drafter. The language of this Agreement shall be interpreted according to the fair meaning and not for or against either party.

h. No Intended Third Party Beneficiary

The parties may each, separately, deal with other persons in connection with other matters that may also relate to or be the subject of this Agreement. The parties do not intend to make any such third person with whom each of them may deal an intended third party beneficiary under this Agreement. There is no third person who is an intended third party beneficiary under this Agreement. No incidental beneficiary (whatever relationship such person may have with the parties) shall have any right to bring an action or suit, or to assert any claim against the Parties under this Agreement.

i. Assignment

Sister City shall have no right to assign its interest in this Agreement without City's prior written consent, which may be granted in City's unfettered discretion. Any attempted assignment without the written consent of the City shall constitute a material breach of this Agreement and be null and void. Prior to agreeing to any assignment, City is entitled to review all financial consideration received for the assignment. Notwithstanding the foregoing, Sister City is permitted to rent the Premises for event use or for a term not to exceed fourteen (14) consecutive days.

j. Time of Essence

Time is of the essence of this Agreement and all of the covenants and obligations hereof.

k. Cancellation

This Agreement is subject to cancellation under the provisions of Arizona Revised Statutes § 38-511.

l. Governing Law

This Agreement shall be governed by the laws of the State of Arizona without application of conflicts of law analysis, and any litigation between the parties regarding this Agreement or the performance of any of the obligations contained in this Agreement shall be initiated in Maricopa County, Arizona.

m. Cooperation

The City shall make available to Sister City any and all relevant historic information and studies in the City's possession related to the Premises.

n. Compliance with Laws

o. Inspection Rights

City may enter any part of the Premises at any time, provided, however, that City shall use its best efforts to minimize interference with the use of Premises by Sister City. Except in the case of an emergency, City shall schedule any repairs of the Premises on a schedule reasonably convenient to Sister City.

p. Conflicts; Personal Liability

1. **Conflict of Interest.** Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation,

partnership or association in which he or she is, directly or indirectly, interested.

2. **No Personal Liability of Sister City Representatives.** No member, manager, officer or employee of Sister City shall be personally liable to City, or any successor or assignee, (a) in the event of any default or breach by the Sister City, (b) for any amount which may become due to the City or its successors or assigns, or (c) pursuant to any obligation of Sister City under the terms of this Agreement.

q. Notices

All Notices which shall or may be given pursuant to this Agreement shall be in writing and may be given in person or transmitted by registered or certified mail, return receipt requested, addressed as follows:

TO SISTER CITY

President, Tempe Sister City Corporation
95 West 4th Street
Tempe, Arizona 85281

With a copy to:

Statutory Agent
At address in Arizona Corporation Commission records

TO CITY:

City Manager
City of Tempe
P. O. Box 5002
31 East 5th Street
Tempe, Arizona 85281

With a copy to:

City Attorney
Tempe City Attorney's Office
P. O. Box 5002
21 E. Sixth Street, Suite 201
Tempe, Arizona 85281

Any Party hereto shall have the right to change its designated notice address by providing to the other Parties written notice of such change in the manner described above.

r. Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the parties hereto.

s. Attorneys' Fees

In the event of any litigation between the parties in connection with this Agreement, excluding the mediation process described above, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

t. Severability; No Merger

In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, to the extent the material provisions of this Agreement are not vitiated.

u. Schedules and Exhibits

All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

v. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

w. No Partnership or Joint Venture

Under no circumstances shall the parties hereto be considered partners or joint venturers.

x. City Manager's Power to Consent

The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect Sister City and/or the development of the Property, and hereby authorizes and empowers the City Manager to consent to any and all requests of Sister City requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement.

y. Force Majeure

All deadlines for performance of any obligation by Sister City shall be extended for a force majeure event which shall include acts of God, inclement weather, shortage of labor or materials, strikes or other labor disputes, accidents, damage or destruction, war, civil insurrection, terrorist activity or threats thereof, failure of City to timely conduct inspections and issue permits, acceptances, consents or approvals, or other events or circumstances beyond the reasonable control of Sister City.

z. Effect as Amendment

This Agreement supersedes and replaces the Service Agreement in its entirety. The Service Agreement shall be of no further force or effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have set forth their hands in the City of Tempe, Arizona, on the day and date first above written.

CITY OF TEMPE, A Municipal Corporation

By _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

TEMPE SISTER CITY CORPORATION, an Arizona
nonprofit corporation

By: _____
President

Schedule 1

the "Improvements"

The proposed Tempe Sister Cities International Center is designed to optimize community gatherings at the historic Hackett House property. The new facility creates approximately 2,800 s.f. indoor/outdoor pavilion that occupies a portion of the existing courtyard to the east of the Hackett House. The new structure is positioned and designed to respect the historic structures on the site, while re-facing the adjacent kitchen /toilet building at the south end of the site and replacing the existing site walls that enclosed the patio. The toilets are also remodeled and brought up to current codes.

The architecture takes its cues from the forms, heights and rhythms of adjacent Hackett House and creates a new aesthetic appropriate of our time while being referential to the authentic historicism of the Hackett House and Bakery building. The new building has been conceived as a pavilion in the garden, with operable glass walls on the west and north which allow the structure to open up to an internal patio between the Hackett House and/or to Fourth Street and the Hayden Square.

The project has considered the future addition of a roof deck as an amenity for patrons visiting the center. This future phase incorporates two egress stairs and an elevator for ADA accessibility. Currently, the property is located at the southern boundary of the pedestrian only Hayden Square. This project proposes returning vehicular traffic to Fourth Street and Maple Avenue albeit in a “calmed” fashion with potential for associated on-street parking, re-establishing the Hackett House as it was originally part of the urban Tempe streetscape.

Schedule 2

1. Design and Construction.

a. The Improvements shall be designed by an architect selected by Sister City, acceptable to City in City's reasonable discretion, constructed by a general contractor and subcontractors to be retained by Sister City, and acceptable to City in City's reasonable discretion ("Sister City's Contractor"). Sister City's Contractor shall not be changed without City's prior written consent, not to be unreasonably withheld. Sister City shall use only licensed, bonded, and responsible contractors to perform the Improvements.

b. After authorization from the City Council, Sister City's architect shall prepare and submit appropriate plans, for the Improvements, through the city's standard development review process.

c. Sister City shall not make any other alterations, additions or improvements to the Premises without City's prior written consent, which consent may be granted or denied in City's unfettered discretion. If Sister City makes any such additional alterations, additions or improvements without first having obtained City's written consent thereto, City may require that Sister City promptly remove any or all of the same at any time. If City does not require the removal of any alterations, additions or improvements installed without its consent at the end of the term, they shall become the property of City and shall be surrendered with the premises.

d. On completion, all such Improvements shall belong to City, shall be and become part of the Premises, without charge or cost to City, and without further conveyance or transfer; provided that if and whenever requested by City, Sister City shall execute and deliver to City such documents as City may require to evidence the vesting of title to such Improvements in City.

e. City hereby appoints the City Architect as City's representative ("City's Representative") to act for City in all design and construction matters covered by this Agreement. Sister City shall notify City who it has designated as Sister City's representative ("Sister City's Representative") to act for Sister City in all matters relating to the construction of the Improvements. All communications with respect to the construction of the Improvements shall be made to City's Representative or Sister City's Representative, as the case may be. Either party may change its representative at any time by written notice to the other party.

f. Sister City shall be solely responsible for obtaining approval of the Final Plans by all governmental agencies having jurisdiction, including all necessary permits and the temporary and permanent certificate of occupancy (or other required, equivalent approval from the local governmental authority permitting occupancy of the Premises). Since time is of the essence, City shall cooperate to the fullest extent possible with Sister City in obtaining such approvals.

- g. Based on the plans approved through the standard development review process,, Sister City shall cause to be prepared complete architectural plans, drawings and specifications and complete engineering, mechanical, structural and electrical working drawings for all of the Improvements. The construction documents shall be submitted to the Building Safety Division for review and approval in accordance with the usual and customary procedures for same in the manner prescribed by the City's currently adopted Building Code, with Amendments.
- h. Sister City's construction documents shall include locations and complete dimensions and shall: (a) be indicative of a design which is compatible with yet distinct from the historic buildings and other structures located at the premises and with the design, construction and equipment of the premises; (b) be indicative of a design which is compatible with and of at least equal quality to the existing improvements at the premises; and (c) comply with all applicable laws and ordinances, and the rules and regulations of all governmental authorities having jurisdiction, and all applicable insurance regulations, including, without limitation, Title III of the Americans with Disabilities Act of 1990, all regulations issued thereunder and the Accessibility Guidelines for Buildings and Facilities issued pursuant thereto, as the same are in effect on the Effective Date and may be hereafter, modified, amended or supplemented (the "ADA"). Notwithstanding City's review of Sister City's construction documents, and whether or not City approves or disapproves any Plans, Sister City and not City shall be responsible for compliance with all applicable laws, including the ADA.

2. Payment for Improvements.

- a. Allowance. City is not providing an allowance for construction of the Improvements.
- b. Work Costs. Sister City shall be and remain responsible for payment of all costs associated with construction and installation of the Improvements. City may, at its option, require Sister City to post a payment and performance bond or other surety satisfactory to City for the estimated costs of construction.
- c. Changes. In the event that material changes to the final construction documents are requested by Sister City or required by any governmental agency subsequent to City's approval thereof, such changes and the costs thereof shall be forwarded to City for approval (which approval shall granted in City's reasonable discretion) prior to incorporation into the work.

3. Construction.

- a. Construction Contract. Sister City shall not commence construction unless and until it has provided City with reasonably satisfactory evidence that it has sufficient funds to pay all costs arising from, or relating to, the construction or design (including permits and

related fees) of the work, as reflected in the construction contract. Prior to commencement of construction of the Improvements, Sister City shall obtain such bids or cost estimates as it may desire and shall thereafter enter into a construction contract with its Contractor. Sister City shall be solely responsible for the performance of the work of the Improvements to be performed by Sister City's Contractor and any and all subcontractors, suppliers and the like performing services for Sister City and/or Sister City's Contractor.

- b. Construction Schedule. Prior to executing a construction contract or the commencement of construction of any Improvements, Sister City shall furnish to City's Construction Representative for approval in writing a schedule setting forth projected completion dates.
- c. Prosecution of Improvements.
 - i. Following City's approval of the final construction documents Sister City and Sister City's Contractor's selection of subcontractors (as reasonably approved by City) and execution of the construction contract pursuant to Section 3.a above, Sister City shall direct Sister City's Contractor and such subcontractors to immediately commence and diligently complete construction of the Improvements.
 - ii. All work shall be carried out in accordance with reasonable rules and regulations promulgated by City. Such work shall be performed diligently, in a first-class, workmanlike manner and in accordance with all applicable laws.
 - iii. Prior to commencing such work, Sister City shall furnish City with sufficient evidence that Sister City and Sister City's Contractor are carrying worker's compensation insurance in statutorily required amounts, comprehensive general liability insurance and all other insurance required during construction by City's Risk Manager against such perils or legal risks as is warranted by the work to be done, and in such amounts as City may from reasonably establish with advance notice to Sister City, in addition to any insurance required to be maintained in accordance with the Agreement. Sister City shall submit certificates evidencing the insurance coverage's required by this Section at least five (5) days prior to the commencement of any work, repair, installation, or improvement.
 - iv. Sister City shall pay or cause to be paid all costs for the Improvements and other work done by Sister City or caused to be done by Sister City on the Premises, and Sister City shall keep the Premises free and clear of all mechanics' liens and materialmen's liens and other liens arising from work done or materials supplied to Sister City or persons claiming under Sister City (collectively, "Mechanics' Liens").

- v. Sister City shall indemnify, defend, and hold City harmless for, from, and against any and all liability, loss, damage, costs, attorneys' fees, and all other expenses arising from all Mechanics' Liens. In addition, Sister City shall keep Sister City's interest in any improvements that are or may become the property of City pursuant to the Agreement free and clear of all liens of attachment or judgment liens (collectively, "**Judgment Liens**").
- vi. If Sister City fails to make the payments required above, and City reasonably believes such failure could result in the creation of a Mechanics' Lien, then City may require that Sister City obtain a payment bond in an amount equal to the costs of completing the Improvements assuring City of lien free completion in accordance with approved plans and specifications, and record the payment bond in the public records of Maricopa County. Sister City will provide a copy of the recorded bond to City within five (5) days after City's request. The payment bond and the recordation thereof shall comply with all of the provisions of A.R.S. Section 33-1003. If Sister City fails to obtain or record the payment bond, City may obtain and record the bond on behalf of Sister City and charge Sister City the amount of the premium and recording fees that City pays to obtain and record the bond plus City's reasonable expenses in obtaining such bond. The foregoing amounts shall be immediately due and payable and owing from Sister City to City, and Sister City shall pay the same to City with interest at the rate of 10% per annum from the date of City's payments.
- vii. Sister City shall cause any Mechanics' Lien or Judgment Lien to be discharged (by bonding or otherwise) within ten (10) days after demand by City. If Sister City shall fail to pay any charge for which a mechanics' or materialmen's lien claim and/or suit to foreclose a lien has been filed, and if Sister City shall not have provided security to protect the Property and City against that claim of lien, City may (but shall not be required) pay the claim and any costs, and the amounts so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Sister City to City, and Sister City shall pay the same to City with interest at the default rate from the dates of City's payments.
- d. The Improvements shall be constructed in a good and workmanlike manner employing good materials so as to conform to all building codes and regulations in existence at the time of construction (and as those codes and regulations are interpreted at the time of construction). Sister City shall cause its contractor to warrant to City and Sister City that materials and equipment constituting part of the Improvements shall be of good quality and new, and that the Improvements will be free from defects, watertight and leak-proof, and will conform in all respects to applicable law. Except when a longer warranty period is specifically required by the Sister City's construction contract or applicable law, the warranties under this Section 4.4 shall be for 24 months and shall become effective on the date of substantial completion. City shall be entitled to the benefits of all warranties provided by Sister City's contractor with respect to the Improvements.

4. Remedies.

a. If Sister City (i) commences any work without first submitting to City and obtaining City's approval of the plans with respect to that work, or (ii) does not use reasonable and diligent efforts to complete its work then City may, at City's option and at any time while Sister City is in default, treat Sister City's failure as an anticipatory breach of Sister City's obligations under the Agreement and, in addition to any and all other remedies provided at law or equity or in the Agreement, City shall be entitled to terminate the Agreement by delivering written notice to Sister City at least ten (10) days in advance of the termination.